

REMARKS

Claims 1-20 are pending in the present application.

In a Response filed September 13, 2005, the Applicants outlined reasons for why the pending claims are allowable over the cited references. The Applicants incorporate those arguments by reference herein.

Claims 1-3, 5, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Shoobridge*, in view of *Berliner*. Claims 4 and 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Shoobridge*, in view of *Berliner*, further in view of U.S. Patent No. 5,996,028 (*Niimi*). Claims 8-10, 12-14, 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Berliner*. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Berliner* in view of U.S. Patent No. 6,633,979 (*Smeets*). Claim 15 is rejected under 25 U.S.C. 103(a) as being unpatentable over *Berliner* in view of *Niimi*. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Berliner* in view of *Shoobridge*.

The Examiner relies on *Berliner* for all his rejections. *Berliner* is directed to a system for determining the distance between two wireless devices using an indirect propagation delay measurement. *Berliner*, col. 3, lines 31-34. *Id.* at col. 6:20-33. Indeed, it is the measurement of this distance that the Examiner alleges corresponds to the claimed feature of “conduction out of band management communications.” See Office Action, page 4.

The Applicants assert that the pending claims are allowable over the cited references. Consider Claim 1, for example. Claim 1, in part, calls for conducting management communications with the access point using said second wireless communications protocol. The

Examiner, conceding that *Shoobridge* does not teach this feature, turns to *Berliner*, and argues that *Berliner* teaches a wireless device determining a distance between itself and another wireless device. There are several problems with the Examiner's rejection. First, the Examiner properly admits on page 6 of the Office Action (in discussing claim 10) that *Berliner* does not "expressly disclose providing wireless management communications." [emphasis added]. This admission alone establishes that the cited references do not teach each and every feature of claim 1.

The Examiner's rejection is improper for an additional reason. As noted, claim 1 calls for conducting management communications. The claim further specifies that this act of conducting management communications occurs with the access point using said second wireless communications protocol. The Examiner argues that base station 100 (a mobile telephone, for example) corresponds to the "access point" of claim 1. The base station 100 (such as a telephone) is not an access point. The term "access point" is well-known to those skilled in the art. It refers to a hardware device that acts as a communication hub to allow remote device users to connect to a local area network (LAN). Indeed, consistent with the understanding of one skilled in the art, the specification describes an access point as a device that allows remote devices to connect to a local area network. See patent application, page 4 (stating that "mobile units become associated with and communicates with the network over access points"). In *Berliner*, the base station 100 is not an access point as it does not allow any remote devices to communicate with a network over (or through) the base station 100. Indeed, the term "access point" is not even mentioned in *Berliner*. While *Berlin* describes that the so-called base station 100 may transmit and receive communications signals with a cellular station, a satellite, or other network switching infrastructure, no where does *Berliner* describe that remote devices can

communicate with a network through this base station. Rather, Berliner simply describes that the base station itself can communicate with a station, a satellite, or other network switching infrastructure (i.e., remote devices do not communicate with the network through the base station). For this additional reason, claim 1 is allowable.

Additionally, to the extent that other claims also call an "access point" or conduction "management communications," these claims are allowable for at least one or more of the reasons presented above.

Independent claims 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Berliner*. Claim 8 is directed to an access point that calls for a second radio module for providing wireless management communications, and Claim 12, in part, calls for allowing access to one or more management features of the apparatus. The Examiner admits that *Berliner* does not disclose wireless management communications. See Office Action, page 7. However, Examiner fails to provide any other reference to substantiate this §103 rejection. Because the Office cites *no references* to support this "obviousness" assertion, the applicant infers that the Examiner makes this assertion based on **personal knowledge**. However, no **supporting affidavit** has been made of record. The applicant respectfully requests that prior art be provided to substantiate this "obviousness" assertion or that an **affidavit** be filed in accordance with 37 C.F.R. § 1.104(d)(2), which states (emphasis added):

(2) When a rejection in an application is based on facts within the **personal knowledge** of an employee of the Office, the data shall be as specific as possible, and the reference *must* be supported, when called for by the applicant, by the **affidavit** of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

Consequently, the applicant respectfully and seasonably requests the Office to either (1) cite a reference in support of this position, or (2) provide a Rule 104(d)(2) affidavit from the Examiner supporting any facts within the personal knowledge of the Examiner, as also set forth in M.P.E.P. § 2144.03.

The Applicants respectfully traverse these rejections.

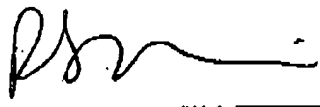
In view of the foregoing reasons, the Applicants request a Notice of Allowability.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Houston, Texas telephone number (713) 934-4064 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

WILLIAMS, MORGAN & AMERSON, P.C.
CUSTOMER NO. 23720

Date: 11/29/05

By: 

Ruben S. Bains, Reg. No. 46,532
10333 Richmond, Suite 1100
Houston, Texas 77042
(713) 934-4064
(713) 934-7011 (facsimile)
ATTORNEY FOR APPLICANT(S)